

APPEAL NO. 041959
FILED SEPTEMBER 9, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 15, 2004. The hearing officer determined that the compensable injury of _____, does not extend to and include cognitive disorder, a cervical spine injury, and a closed head injury. The appellant (claimant) appeals this determination on sufficiency of the evidence grounds. The respondent (self-insured) asserts that the claimant's appeal is untimely and, in the alternative, urges affirmance.

DECISION

Affirmed.

We first address the carrier's assertion that the claimant's appeal is untimely. A written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision, excluding Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code. Section 410.202(a) and (d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(e) (Rule 143.3(e)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(e) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994. The claimant was deemed to have received the hearing officer's decision on June 30, 2004, pursuant to Rule 102.5(d). The last date for the claimant to timely file an appeal was July 21, 2004. The appeal indicates that it was mailed on July 20, 2004, by certified mail. The claimant's return receipt shows that the appeal was received by the Texas Workers' Compensation Commission on July 23, 2004. The appeal was, therefore, timely filed.

The hearing officer did not err in determining that the compensable injury of _____, does not extend to and include cognitive disorder, a cervical spine injury, and a closed head injury. This determination involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**GB
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Edward Vilano
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge